1051.

# SUPREME COURT OF THE UNITED STATES.

## No. 77.

AUGUSTUS AND EDWARD BONNAFFE, PARTNERS UNDER THE NAME AND STYLE OF BONNAFFE & CO., PLAINTIFFS IN ERROR,

vs.

IRA E. WILLIAMS ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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BONNAFFE & Co.,
*vs.*
IRA E. WILLIAMS et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the November term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that heretofore, to wit, on the 20th day of March, in the year of our Lord 1841, the following writ of summons ad respondendum, issued out of the clerk's office of the court aforesaid, in the words and figures to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, ss:*

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you without delay to summon Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, that they be and appear at the circuit court of the United States to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Augustus Bonnaffe and Edward Bonnaffe, citizens of the State of New York, and partners under the firm of Bonnaffe & Co., of a plea of trespass on the case to their damage fifteen thousand dollars, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 20th day of March, A. D. 1841, and of the independence of the United States the sixty-fifth.
[L. S.]

WM. BURNS, *Clerk.*
By GEO. W. MILLER, *D. C.*

Marshal's return, executed on Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, personally.

F. S. HUNT, *Marshal.*
By JNO. LYNCH, *his deputy.*

And on the said 20th day of March, A. D. 1841, the said plaintiffs, by their attorneys, Van Winkle and Potter, filed their declaration herein against the said defendants, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, ss:*

United States circuit court, ninth judicial circuit, May term, in the year 1841.

Augustus Bonnaffe and Edward Bonnaffe, partners under the name and style of Bonnaffe & Co., who are citizens of the State of New York, plaintiffs in this suit, complain of Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, who are citizens of the State of Mississippi, defendants, summoned, &c., of a plea of trespass on the case upon promises. For that whereas the said defendants, by the names and signatures of Ira E. Williams, Ch. S. Spann, and B. H. Cook, heretofore, to wit, on the 2d day of January, in the year of our Lord one thousand eight hundred and thirty-nine, at Clinton, Mi., to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid; and then and there delivered the said promissory note to one Cowles Mead, and thereby then and there promised that they, or either of them, would pay, six months after the second day of January, 1839, to the said Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, seven thousand five hundred dollars, without defalcation, for value received, which said Cowles Mead and the said defendants, and divers other persons, at the time of the making of the said note, were members of, and partners in, said Real Estate Banking Company, and were then and there associated as partners, under the name of the Real Estate Banking Company of Hinds county, for banking purposes. And the said Cowles Mead then and there duly assigned and delivered the said note to the said plaintiffs, who thereby then and there became, and still are, the lawful bearers *bearers* thereof, and entitled to demand payment of the same, whereof said defendants then and there had due notice; by means whereof the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of said note; and being so liable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at said district, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said note specified, according to the tenor and effect thereof.

And also for this, that the said defendants, by the names and signatures aforesaid, heretofore, to wit, on the 23d day of January, in the year of our Lord one thousand eight hundred and thirty-nine, at Clinton, Mi., to wit, in the district aforesaid, made their certain other promissory note in writing, bearing date the *the* day and year now last aforesaid, and then and there delivered the said last mentioned promissory note to one Cowles Mead, in this count after mentioned, and thereby then and there promised that they, or

either of them, would pay, ten months after the 23d day of January, 1839, to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking-house in Clinton, one thousand eight hundred dollars, without defalcation, for value received, which said Cowles Mead and the said defendants, and divers other persons, at the time of the making of the said last mentioned note, were members of, and partners in, said Real Estate Banking Company, and were then and there associated under the name of the Real Estate Banking Company of Hinds county, for banking purposes. And the said Cowles Mead, to whom, or to the bearer thereof, the said last mentioned note was to be paid, then and there duly assigned and delivered the same to the plaintiffs, who thereby then and there became, and still are, the lawful bearers thereof, and entitled to demand payment thereof, whereof the said defendants then and there had due notice, by means whereof the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said last mentioned promissory note specified, according to the tenor and effect of said note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, in said district undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said last mentioned note specified, according to the tenor and effect thereof.

And also for this, that the said defendants, by the names and signatures aforesaid, heretofore, to wit, on the 3d day of January, in the year of our Lord one thousand eight hundred and thirty-eight, at Clinton, Mi., to wit, in the district aforesaid, made their certain other promissory note in writing, bearing date the day and year now last aforesaid; and then and there delivered the said last mentioned promissory note to one Cowles Mead, (in this count after mentioned,) and thereby then and there promised that they, or either of them, would pay, ten months after the 9th day of January, 1839, to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, two thousand five hundred dollars, without defalcation, for value received, which said Cowles Mead, and the said defendants, and divers other persons, at the time of the making of the said last mentioned note, were members of, and partners in, said Real Estate Banking Company, and were then and there associated as partners, under the name of the Real Estate Banking Company of Hinds county, for banking purposes. And the said Cowles Mead, to whom, or the bearer of the said last mentioned note, the same was to be paid, then and there duly assigned and delivered the same to said plaintiffs, who thereby then and there became, and still are, the lawful bearers thereof, and entitled to demand payment of the same, whereof said defendants then and there had due notice. By means whereof the said defendants then and there became liable to pay the said plaintiffs the said sum of money in

the said last mentioned promissory note specified, according to the tenor and effect of the same; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year in this count first aforesaid, at said district, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said last mentioned note specified, according to the tenor and effect thereof.

And also for this, that the said defendants, by the names and signatures aforesaid, heretofore, to wit, on the 23d day of January, in the year of our Lord one thousand eight hundred and thirty-nine, at Clinton, Mi., to wit, in the district aforesaid, made their certain other promissory note in writing, bearing date the day and year now last aforesaid, and then and there delivered the said last mentioned promissory note to one Cowles Mead, in this count after mentioned, and thereby then and there promised that they, or either of them, would pay, six months after the 23d day of January, 1839, to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking-house in Clinton, three thousand six hundred dollars, without defalcation, for value received; which said Cowles Mead and the said defendants, and divers other persons, at the time of the making of the said last mentioned note, were members of, and partners in, said Real Estate Banking Company, and were then and there associated as partners under the name of the Real Estate Banking Company of Hinds county, for banking purposes. And the said Cowles Mead, to whom, or to the bearer thereof, the said last mentioned note was to be paid, then and there duly assigned the same note to said plaintiffs, who thereby then and there became, and were and still are, the lawful bearers thereof, and entitled to demand payment of the same, whereof the said defendants then and there had due notice. By means whereof the said defendants became then and there liable to pay the said plaintiffs the said sum of money in the said last mentioned promissory note specified, according to the tenor and effect thereof; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at said district, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said last mentioned promissory note specified, according to the tenor and effect thereof.

Yet the said defendants, not regarding their said promises and undertakings, have not as yet paid the said plaintiffs the said several sums of money, or either of them, or any part thereof, (although often requested so to do;) but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto wholly failed and refused, and still do refuse so to do, to the damage of the said plaintiffs of fifteen thousand dollars; and therefore they bring their suit, &c.

H. E. VAN WINKLE,
GEO. L. POTTER,
*Plaintiffs' Attorneys.*

*Copy of the notes sued on.*

$7,500. CLINTON, MI., *January* 2*d*, 1839.

Six months after the 2d day of January, 1839, we, or either of us, promise to pay to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, seven thousand five hundred dollars, without defalcation, for value received.

Signed, IRA E. WILLIAMS,
CH. S. SPANN,
B. H. COOK.

Discounted for $5,000 00.

J. B. E., *Clk.*

Endorsement, "Sept. 1st, 1839. Credit by eight thousand five hundred and sixty-eight dollars, proceeds of 226 bales of cotton *a* $38 per bale."

$1,800. CLINTON, MI., *January* 23*d*, 1839.

Ten months after the 23d day of January, 1839, we, or either of us, promise to pay to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, one thousand eight hundred dollars, for value received.

Signed, IRA E. WILLIAMS,
B. H. COOK,
CH. S. SPANN.

Discounted for $1,800.

J. B. E., *Clk.*

$2,500. CLINTON, MI., *January* 3*d*, 1838.

Ten months after the 9th day of January, 1839, we, or either of us, promise to pay to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, two thousand five hundred dollars, without defalcation, for value received.

Signed, IRA E. WILLIAMS,
B. H. COOK,
CH. S. SPANN.

Discounted for $2,500. J. B. E., *Clk.*

$3,600. CLINTON, MI., *January* 23*d*, 1839.

Six months after the 23d day of January, 1839, we, or either of us, promise to pay to Cowles Mead or bearer, for the use of the Real Estate Banking Company of Hinds county, at their banking house in Clinton, three thousand six hundred dollars, without defalcation, for value received.

Signed, IRA E. WILLIAMS,
B. H. COOK,
CH. S. SPANN.

Discounted for $3,600. J. B. E., *Clk.*

And the defendants, by attorney, come and defend the wrong and injury, when, &c., and say actio non, because, they say, the plaintiffs' declaration, and the matters and things therein contained, are not sufficient in law for the plaintiffs to have and maintain their action aforesaid, and this they are ready to verify; and wherefore they pray judgment, &c.

And for cause of demurrer, the said defendants, according to the form of the statute in such case made and provided, sit down and show the following, to wit:

1st. The plaintiffs cannot maintain the action, because, by their own showing, the defendants who are sued are also a part of the persons for whose use the suit is commenced.

2d. The court can have no jurisdiction of this case, because, although it is true, the nominal plaintiffs are the bearers of the paper sued on, and citizens of a State other than Mississippi, yet the *usees*, or those for whose benefit the suit is brought, for any thing which appears in the declaration, are citizens of the State of Mississippi, and there are all other causes, &c.

HUGHES, *for defts.*

And the said plaintiffs say, that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs, to have and maintain their aforesaid action thereof against them the said defendants; and the said plaintiffs are ready to verify and prove the same as the court here shall direct and award. Wherefore, inasmuch as the said defendants have not answered the said declaration, nor hitherto in any manner denied the same, the plaintiffs pray judgment and their damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them.

H. E. VAN WINKLE, and
GEO. L. POTTER,
*Atto's for pl'ffs.*

Afterwards, to wit, at the said November term of the court aforesaid, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-two, until which time this cause was legally continued, came the parties aforesaid, by their said attorneys, and the defendants' demurrer to the plaintiffs' declaration, and all the matters and things therein contained, being now fully argued and heard, and now understood by the court, it is now ordered and adjudged that the said demurrer be sustained, and that the defendants go thereof hence without day, and recover of the said plaintiffs their costs and charges by them about their defence in this behalf expended. And thereupon the plaintiffs, by their attorneys aforesaid, pray a writ of error from said judgment to the Supreme Court of the United States; which is granted upon their executing bond with security conditioned

according to law; which said bond, now approved by the court, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern district of Mississippi, sct.*

Know all men by these presents, that we, Augustus Bonnaffe and Edward Bonnaffe, of the city of New York, Henry E. Van Winkle and George L. Potter, of the State of Mississippi, are held and firmly bound unto Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, their lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 25th day of November, A. D. one thousand eight hundred and forty-two.

The condition of this obligation is such that, whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson on the first Monday of November, A. D. 1842, judgment was rendered by the said court in favor of the said Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, against the said Augustus Bonnaffe and Edward Bonnaffe for the sum of costs of suit, and the said Augustus Bonnaffe and Edward Bonnaffe have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Augustus Bonnaffe and Edward Bonnaffe shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs as the said Supreme Court of the United States shall adjudge in the premises, if they, the said Augustus Bonnaffe and Edward Bonnaffe shall fail to make their plea good, then and in that case this obligation to be void; otherwise to remain in full force and virtue.

AUGUSTUS BONNAFFE, [L. S.]
By his attorney, GEO. BERGEROT.
EDWARD BONNAFFE, [L. S.]
By his attorney, GEO. BERGEROT.
HENRY E. VAN WINKLE. [L. S.]
GEORGE L. POTTER. [L. S.]

UNITED STATES OF AMERICA,
*Southern district of Mississippi, circuit court, U. S.*

I, William H. Brown, clerk of said court, do hereby certify that the foregoing ten pages, with what is contained on this page, contain a full, true, and complete transcript of the record of the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said court, at Jackson, this 15th day of December, A. D. 1842.

W. H. BROWN, *Clerk.*
By GEORGE W. MILLER, *Dep. Clk.*

UNITED STATES OF AMERICA, *ss:*

To Ira E. Williams, Charles S. Spann, and Benjamin H. Cook, or Robert Hughes, their attorney-at-law, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Augustus Bonnaffe and Edward Bonnaffe, under the firm of Bonnaffe & Co., are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the district of Mis-
[L. S.] sissippi, this 6th day of December, in the year of our Lord one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

S. J. GHOLSON.

Executed 10th December, 1842, on Robert Hughes.

A. MILLER, *Ml.*
By GEO. B. ADAMS, *dep.*

Filed 3d February, 1843.